



**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

CIA No. 30/2003

Date of Decision: 07.12.2009

Collector Vs. Bansilal & Ors

Coram:

HON'BLE MR. JUSTICE SUNIL HALI, JUDGE.

Appearing Counsel:

For the Appellant(s): Mr. A. H. Qazi, AAG.
For the Respondent(s) : Mrs. Sindhu Sharma, Advocate.

i)	Whether to be reported in Press, Journal/Media	:	Yes/No
ii/	Whether to be reported in Digest/Journal	:	Yes/No

Land measuring 629 kanal and 2 marlas, comprised in different survey numbers situate at village Roun Tehsil Udhampur was required for construction of Udhampur Rail link. The number of owners, whose land was acquired, was 36. Notification under Section 4(1) of the Land Acquisition Act (for short ~~the Act~~ hereafter) was issued on 31.03.1986, to which a corrigendum was issued on 31.09.1988. Notification under Section 6 and 7 of the Act was issued on 03.04.1989 followed by a corrigendum dated 10.11.1989. An award came to be passed by the Collector on 16.07.1994. The Collector, while assessing the compensation payable, had classified the land into different categories as per its location. The land adjoining

the National High Way was categorized as **हम** and others as **हम** and **हम** depending on their position hinter to this road. After having classified the land as such, the following compensation was awarded:-

हम Category (A)

- 1. Hail/Pail Asmani & land under structures. Rs. 15000/- P.K
- 2. Warhal Changi: Rs. 14000/- P.K
- 3. Warhal Mandhi: Rs. 13000/- P.K
- 4. Banjar Qadeem: Rs. 7000/- P.K
- 5. Gair Mumkin: Rs. 5000/- P.K

Category (B)

- 1. Hail/Pail Asmani & land under structures. Rs. 13000/- P.K
- 2. Warhal Changi: Rs. 12000/- P.K
- 3. Warhal Mandhi: Rs. 11000/- P.K
- 4. Banjar Qadeem: Rs. 6000/- P.K
- 5. Gair Mumkin: Rs. 4000/- P.K

Category ©

- 1. Hail/Pail Asmani & land under structures. Rs. 11000/- P.K
- 2. Warhal Changi: Rs. 10000/- P.K
- 3. Warhal Mandhi: Rs. 9000/- P.K
- 4. Thangar: Rs. 6000/- P.K
- 5. Banjar Qadeem: Rs. 4000/- P.K
- 6. Gair Mumkin: Rs. 3000/- P.K

The compensation awarded did not satisfy the owners. A reference under Section 18 of the Act was made to the District Judge Udhamour. After hearing the parties, the Court enhanced the compensation to Rs.

40,000/- per kanal for all the categories of the land irrespective of their location and quality. Feeling aggrieved, the appellant has filed the present appeal.

The award has been challenged on the following grounds:-

a/ The compensation awarded by the Court was in violation of Sections 23 and 24 of the Act;

b/ While assessing the market value, the evidence must be proximate to publication of declaration under Section 6 of the Act and should not be remote.

c/ That the trial Court has placed reliance on sale rates which were not proximate to the date of declaration of notification under Section 6 of the Act;

d/ That reliance placed on sale deeds of small parcels of land could not have been made the basis for fixing the amount of compensation;

e/ That classification and location of the land was important for determining the market value of the land; and

f/ That while assessing the compensation, potential value of the land was the relevant factor, which has been ignored by the court below;

I have heard the learned counsel for the parties and perused the order of the trial Court.

On the pleadings of the parties following issues were raised:-

1. Whether the Collector has not assessed the compensation as per market rate prevalent at the relevant time? O.P.P
2. If issue No.1 is proved in affirmative, what was the actual market rate and at what rate of compensation the petitioners-objectors deserve to be paid? OPP
3. Relief.

In support of their contention, respondent-objectors examined Krishan Kumar, Jagan Nath, Gulab Chand, Baldev Singh, Chet Ram, Sudershan and Yash Paul, Patwari, besides producing certified copies of the sale deeds executed by Anant Ram, Dev Raj and Magtoo.

PW Krishan Kumar stated that his 37 kanals of land was acquired. The land is located approximately ten kilometers from Udampur Town. There are 80 to 90 shops constructed around the land in question besides BSF Colony is also adjoining the said piece of land.

Petitioner Jagan Nath stated that 14 kanals of his land out of total 629 kanals has been acquired by the Railway Department. He also admits that 40 to 50 shops have been constructed in the vicinity of the land and there is also a BSF Colony.

Gulab Chand states that his wife purchased land in Roun Domail, on which he had raised a Joinery Mill and 8 shops. 6 Kanals out of this land was acquired by PWD and compensation of Rs. 10,000/- per kanal was awarded by the Collector in the year 1986. On reference the award was enhanced to Rs. 50,000/- per kanal. He states that the cost of the land is 3,60,000/- per kanal in the area.

Baldev Singh states that he has purchased 5 marlas of land at the rate of Rs. 30,000/-. He states that after construction of the Railway line in Roun Domail. He further states that one marla of land fetches Rs. 20,000/-. He admits that land is 7/8 kilometers away from Udhampur Town.

PW Chet Ram states that he has sold 5 marlas of land for Rs. 30,000/- to Baldev Singh 7/8 years before..

PW Sudershan has stated that he has purchased one marla of land for Rs. 5000/- from Mangat Ram , which abuts the road.

Yash Paul, PW7, who is the Patwari of the Halqa, has stated that 5 marlas of land of Anant Ram was sold to Krishan Chand for Rs. 12,000/-. One Dev Raj has sold one kanal of land for an amount of Rs. 25,000/- vide mutation no. 4994 dated 5.12.1987. Mangtoo has sold two marlas of land to Thakur Dass for Rs. 30,000/- vide

mutation no. 519 and one marla to Sudershan for Rs. 5000/- vide mutation no. 548. He states that vide Mutation no. 627, seven marlas of land was sold by Rattan Lal to Sobha Ram for an amount of Rs. 50,000/- on 11.01.1993.

In rebuttal, statement of Collector Tara Chand was recorded. He has stated that land was acquired for construction of houses of BSF personnel. He states that land has been purchased at the rate of Rs. 35,000/- to Rs. 50,000/- per kanal from the year 1985 to 1987. He stated that the Collector had determined the average rate on the basis of the report submitted by the Tehsildar. However, to which particular year this rate pertained, was not known to him. No sale deed was referred to determine the average rate of the land.

What would be the price fetched in the open market if status of the land continued to remain in the same condition, as it was at the time of acquisition. The expression ~~to open market~~ is synonyms with the market value. What is fair and reasonable market value is always a question of fact depending on the nature of the evidence, circumstances and probabilities in each case. The guiding factor would be the conduct of a hypothetical, willing vendor would offer the lands and a willing purchaser in normal human conduct would be willing to

buy as a prudent man in normal market conditions as on the date of the notification. The relevant features to determine the market value would be the nature of the land, the quality of the land, the market conditions prevailing as on the date of acquisition, potential value of the land as on the date of its acquisition. Some of the important methods for determination of market value are as under:-

- a/ Comparable sale rates of the area where land is situated;
- b/ Average sale rates in the area as also its potential market value to which the land can be used; and
- c/ The location of the land and the comparable sale rates on the date of notification.

Applying these principles in the case in hand, it would be necessary to analyze the evidence produced by the parties.

While going through the statements of the witnesses as also the Collector, it emerges that sale rates of 35000/- to 50000/- per kanal was prevalent from the year 1985 to 1987. This fact has been admitted by the Collector in his statement. The assessment made by the Tehsildar, while determining the sale rate, does not mention the year for which the said assessment has been

made. The witnesses and the sale deeds produced by the claimants also indicate that the sales affected in the locality have proximate link and as such are relevant for determining the market value of the land.

Viewed thus, it clearly emerges that the average sale rate in the year 1989, the date of publication of notice under Section 6 and 7 of the Act, is approximately Rs. 35000/- to Rs. 50,000/- per kanal. This fact has clearly been admitted by the Collector in his statement recorded before the Court below.

The contention that reliance has been placed on sale transactions relating to small pieces of land, cannot be considered. There is no dispute with this proposition of law that, where large area is the subject matter of acquisition, rate at which small plots are sold, cannot be said to be a safe criteria. However, it cannot be laid down as an absolute proposition that in such cases the rates fixed for small plots cannot be made the basis for fixation of the rate. For example, where there is no other material, it may in appropriate cases be open to the adjudicating court to make comparison of the prices paid for small plots of land. This view has been held by Hon^{ble} Supreme Court of India in Luchnow Development

Authority vs. Krishna Gopal Lahori and Ors, reported as

AIR 2008 SC, 399, where it has been held as under:-

Where large area is the subject-matter of acquisition, rate at which small plots are sold cannot be said to be a safe criteria. It cannot, however, be laid down as an absolute proposition that in such cases, the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material, it may in appropriate cases be open to the adjudicating court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions/adjustments have to be made while determining the prices. ॐ

Applying the judgment supra to the facts of the present case, it be seen that there is no other material indicating the market value of the land except the sales made in reference to small plots of land. No error has, thus, been committed by the learned District Judge in this regard.

Coming to next ground of challenge that whether the land could be categorized both in terms of its quality and location for purposes of determining the compensation, it be seen that the Collector had not only categorized the land in reference to its location, but has also categorized it in respect of its quality.

In respect of the first contention that the land could be categorized on the basis of its location, it can safely be said that such a principle could not have been applied in the present case by the Collector. Merely because some

portion of the land abuts the road side, higher rate of compensation should be paid while in respect of the land on the interior side, it should be at lower rate, may not stand to reason because when sites are formed those abutting the main road may have its advantages as well as disadvantages. Many a discerning person may prefer to stay in the interior and far away from the main road and may be willing to pay a reasonably higher price for that site. One cannot rely on the mere possibility so as to indulge in a meticulous exercise of classification of the land as was done by the Collector when the entire land was acquired in one block and, therefore, classification of the same into different categories does not stand to reason. In *C. E. S. C. Limited vs. Smt. Sandhya Rani Barik & Ors*, reported as AIR 2008 Supreme Court, 2873, Hon^{ble} Supreme Court has held as under:-

Where a very large plot of land has been acquired and the comparison is sought to be made with a comparatively small piece of land which has been sold or otherwise dealt with, then in that event, a percentage of the price is to be knocked off because of the largeness itself of the acquired land. Accordingly, the High Court made the deductions. The High Court also dealt with the question of land locking and held that it was a special feature which had to be taken note of.

Applying this principle in the present case, it clearly emerges that the market value of the land was approximately Rs. 50,000/- per kanal at the time of

acquisition. The percentage of the price has to be knocked off. The learned District Judge has rightly assessed the land at Rs. 40,000/- per kanal.

There is one more aspect of the matter that the land of one Shanti Devi was acquired by the Public Works Department in the same village and the compensation awarded by the Collector was enhanced to Rs. 50,000/- per kanal in reference to the District Judge. The land in that case was acquired in the year 1986 whereas the land in the present case has been acquired in the year 1989. This is also one of the factors which have weighed in the mind of the learned District Judge while enhancing the compensation.

The other contention of the appellant is that the Court below has not considered the potential of the land while assessing the compensation. It has come on record that the land is situated on the National Highway and is abutted by a BSF Colony. It has also come on record that about 70/80 shops had been constructed there, which is sufficient to indicate that the area has a potential of being developed into a commercial centre.

The last contention raised by the appellant is that the intending department has not been arrayed as party

before the District Judge, as such the order is bad in the eyes of law.

There is no dispute with this proposition of law that the intending department is an interested party. This view is settled by the various judgments of the Apex Court. The mandate of law is that they ought to be heard before any order is passed by the District Court or this Court. The object of impleading the respondents as party is to ensure that they should not go unheard. It is also true that rule of natural justice is not ritual which is to be performed by the Court. The aim of the rule of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. This rule can operate only in areas not covered by any law validly made. Whenever a complaint is made before the Court that some principle of natural justice has been violated, the Court has to decide whether the observance of that rule was necessary for just decision of the facts of the case.

The principles of natural justice cannot be put in a straitjacket formula. It must be seen in circumstantial flexibility. It has separate facets. It has in recent time also undergone a sea change. The non-observance of the rule must prejudice the cause of the person. Applying this test to the present case, a judicial notice can be taken of

the fact that the intending department has all along shown its awareness regarding the pendency of these proceedings. It had filed objections before the Collector and has also deposited the award amount before the District Judge. A judicial notice can be taken of the fact that a big chunk of land had been acquired by the Railway Department within the vicinity of the land where the present land has been acquired. In all those proceedings various awards have been passed and compensation at the rate of Rs. 50,000/- per kanal has been paid. It is also observed that compensation has been paid to all those persons whose land has been acquired for the purposes of construction of Railway link. The intending department had willingly paid Rs. 50,000/- per kanal as compensation in the areas abutting the land, which has been acquired in the present case.

Even though no notice has been issued by the learned District Judge to the intending department, but the intending department has shown its awareness all along regarding the pendency of the proceedings. They were well within their rights to file an application seeking their impleadment before the court below. Where the intending department is aware of the proceedings, it cannot claim that it was prejudiced because of non-

issuance of notice by the reference Court. It could have filed an application under Order 1 Rule 10 for being impleaded as a party respondent.

The other aspect of the matter is that the land has been acquired in the year 1989 and the reference Court has decided the reference on 22.05.2003. As the case is pending since long, directing impleadment of the intending department will delay the proceedings in the matter, more particularly when the intending department has not been prejudiced.

I, therefore, do not find any merit in this appeal, which is, accordingly, dismissed.

(SUNIL HALI)
Judge

JAMMU:
07.12.2009
Anil Raina, Secy.